

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
JOANNE HOEPER, State Bar #114961  
Chief Trial Deputy  
SCOTT D. WIENER, State Bar #189266  
Deputy City Attorney  
Fox Plaza  
1390 Market Street, 6<sup>th</sup> Floor  
San Francisco, California 94102-5408  
Telephone: (415) 554-4283  
Facsimile: (415) 554-3837

Attorneys for Defendant  
CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALEXIS BAUTISTA, an individual,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, SAN FRANCISCO  
POLICE DEPARTMENT, SAN  
FRANCISCO POLICE OFFICER  
WILLIAMS, SAN FRANCISCO POLICE  
SERGEANT ESPINOZA, SAN  
FRANCISCO POLICE OFFICER LUM,  
DOES 1 to 20, Inclusive,

Defendants.

Case No. C07-5434 CW

**DEFENDANTS' SEPARATE CASE  
MANAGEMENT STATEMENT (PRO  
PER CASE)**

Date: August 26, 2008  
Time: 2:00 p.m.  
Hon. Claudia Wilken

1 Defendants submit this Case Management Statement in anticipation of the August 26, 2008,  
2 Case Management Conference. Because Plaintiff is pro per, the parties are not submitting a joint  
3 statement.

4 1. Jurisdiction and Service

5 The Court has subject matter jurisdiction over this case pursuant to its federal question  
6 jurisdiction and supplemental jurisdiction. All Defendants have appeared.

7 2. Facts

8 In the late evening of October 5, 2006, San Francisco police officers were patrolling the 400  
9 block of Townsend Street, an area known for assaults, drug use, and prostitution. Officers observed  
10 a vehicle whose rear window was fogged up. Inside the vehicle, there appeared to be a male figure  
11 on top of another person in the back seat of the vehicle. Because the vehicle was in an isolated high-  
12 crime area, the officers decided to investigate.

13 The officers approached the vehicle and shined a flashlight in, at which point they observed a  
14 male figure on top of a woman. When the man saw the officers, he got off of the woman. The  
15 officers motioned to the man to open the car door, which he did. The officers asked the two for  
16 identification. The man, later identified as Rene Gallardo, complied. The woman, later identified as  
17 Plaintiff Alexis Bautista, refused and immediately began to speak in an agitated and belligerent  
18 manner. Gallardo attempted to calm Plaintiff down, but to no avail.

19 Plaintiff suddenly exited the vehicle without being asked and then dove back into the vehicle  
20 to avoid the officers. The officers decided to detain Plaintiff, given her resistive and belligerent  
21 behavior during this investigative stop. Plaintiff was not compliant with the officers' instructions  
22 and was physically resistive. Plaintiff kept her arms crossed in order to deny the officers access to  
23 them. The officers continued to attempt to extract Plaintiff from the car, but she continued to resist.  
24 The officers prepared to use pepper spray to obtain compliance, but the pepper spray was never used.  
25 Gallardo pled with Plaintiff to obey the officers instructions. The officers eventually were able to  
26 pull Plaintiff out of the car. Because of her resistance in being taken out of the car, she fell down on  
27 her knee and scraped it when she was extracted. Once out of the car, Plaintiff continued to avoid  
28 being handcuffed, but the officers were eventually were able to cuff her.

Only the minimal force described above was used on Plaintiff. Plaintiff's allegation that an officer touched her inappropriately or sexually assaulted her is a complete fabrication. At no point did any officer touch Plaintiff inappropriately, fondle her, or otherwise sexually assault her.

Plaintiff was briefly detained in handcuffs and then cited and released. She declined medical attention. Gallardo apologized to the officers for what had occurred.

#### Principal factual issues in dispute

The circumstances surrounding Plaintiff's arrest

Whether Plaintiff resisted arrest.

Whether Plaintiff engaged in the conduct described above.

Whether the officers engaged in the conduct described in Plaintiff's complaint.

The level of force that officers used against Plaintiff.

Whether the officers touched Plaintiff inappropriately, as described in Plaintiff's version.

The nature and extent of Plaintiff's injuries.

#### 3. Legal Issues

Whether the officers had reasonable suspicion and/or probable cause to detain and/or arrest Plaintiff.

Whether the officers used reasonable force against Plaintiff.

Whether the officers are entitled to qualified immunity.

Whether Plaintiff resisted arrest.

Whether Defendants' caused any of Plaintiff's alleged damages.

Whether Plaintiff was at fault for any damages that she sustained.

Whether the City is liable to plaintiff under 42 U.S.C. section 1983 and under California law.

#### 4. Motions

Defendants moved to compel Plaintiff to respond to discovery and to provide initial disclosures. The Court ordered her to do so, and Plaintiff failed to comply with that order. The Court then set a new deadline, which Plaintiff has again missed. Plaintiff has never responded to discovery or provided initial disclosures.

Defendants may move for summary judgment or partial summary judgment.

1 Defendants may move to stay *Monell* discovery and to bifurcate *Monell* issues from the  
2 underlying liability issues.

3 5. Amendment of Pleadings

4 Defendants do not anticipate amendments to the pleadings.

5 6. Evidence Preservation

6 Defendants have preserved evidence.

7 7. Disclosures

8 Defendants served initial disclosures pursuant to Fed. R. Civ. P. 26. Plaintiff has never  
9 provided initial disclosures, which were due in January of this year.

10 8. Discovery

11 Defendants took the deposition of witness Rene Gallardo. Plaintiff did not appear for her  
12 own deposition.

13 Plaintiff has not responded to written discovery. The Court issued an order setting several  
14 deadlines for her to do so. Plaintiff has missed all such deadlines and still has not responded.  
15 Counsel just received a letter from Plaintiff to the Court indicating that she has not received  
16 Defendants' discovery requests. Defendants have provided copies to Plaintiff several times, in  
17 addition to having served them in January on Plaintiff's former counsel. Moreover, Plaintiff does not  
18 need anything from Defendants in order to complete her initial disclosures, yet she still has not done  
19 so.

20 At this point, it appears that Plaintiff is not taking the Court's deadlines seriously. Her initial  
21 disclosures were due 7 months ago, and her written discovery responses were due 6 months ago.  
22 She has made minimal effort, if any, to comply with the Court's directives.

23 9. Class Actions

24 This case is not a class action.

25 10. Related Cases

26 Defendants are unaware of related cases.  
27  
28

11. Relief

Plaintiff is seeking damages, punitive damages, attorneys fees, and costs. Defendants are seeking attorneys fees and costs.

12. Settlement/ADR

The parties agreed to participate in mediation. The mediator, however, was unable to obtain cooperation from Plaintiff, and no mediation has occurred.

13. Consent to Magistrate Judge for all Purposes

Defendants do not consent to trial of this case by a United States Magistrate Judge.

14. Other References

The case is not suitable for such a reference.

15. Narrowing of Issues

Defendants are unable to evaluate at this point whether there are issues that can be narrowed.

16. Expedited Schedule

This case is not suitable for an expedited schedule.

17. Scheduling

The Court set a case management schedule.

18. Trial

The Court set a trial date of April 13, 2009.

19. Disclosure of Non-Party Interested Entities or Persons

Defendants are unaware of nonparties with such an interest in this lawsuit.

Dated: August 18, 2008

DENNIS J. HERRERA

City Attorney

JOANNE HOEPER

Chief Trial Deputy

SCOTT D. WIENER

Deputy City Attorney

-s/- *Scott D. Wiener*

By: \_\_\_\_\_

SCOTT D. WIENER

Attorneys for Defendant

CITY AND COUNTY OF SAN FRANCISCO